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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

|                                   |   |                  |
|-----------------------------------|---|------------------|
| UNITED STATES OF AMERICA,         | ) |                  |
|                                   | ) |                  |
| Plaintiff,                        | ) | CIV-             |
|                                   | ) |                  |
| v.                                | ) |                  |
|                                   | ) |                  |
| THE CITY OF JACKSONVILLE, FLORIDA | ) | <u>COMPLAINT</u> |
|                                   | ) |                  |
|                                   | ) |                  |

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The United States of America, by authority of the Attorney General of the United States and on behalf of the Administrator of the Environmental Protection Agency ("EPA"), all

### PRELIMINARY STATEMENT

1. This is a civil action brought under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, as amended by the Superfund Amendment and Reauthorization Act of 1986 ("SARA"), Pub. L. No. 99-499, 100 Stat. 1613 (1986), relating to the Brown's Dump Site and Jacksonville Ash Site (together referred to as the "Sites") located in Jacksonville, Duval County, Florida. The United States seeks injunctive relief and reimbursement of response costs incurred by the United States in connection with the Sites.

### JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) and (c).

### PARTIES

4. Plaintiff is the United States of America, acting at the request of the United States Environmental Protection Agency ("EPA"), an agency of the United States.

5. Defendant City of Jacksonville, Florida is a political subdivision of the State of Florida under the laws of the State of Florida.

6. Defendant City of Jacksonville is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

7. Defendant City of Jacksonville is a past owner/operator of the Site, and a generator of hazardous substances, as well as a transporter which arranged for the disposal of hazardous substances within the meaning of Section 107(a) (1), (2), (3) and (4) of CERCLA, 42 U.S.C. § 9607(a) (1), (2), (3), and (4).

#### GENERAL ALLEGATIONS

8. From the 1910's to the 1960's, the City of Jacksonville operated the Forest Street incinerator and another incinerator at the intersection of 5<sup>th</sup> and Cleveland Streets, both in the City of Jacksonville. The Forest Street incinerator site is approximately 27 acres and the site at the 5<sup>th</sup> Street and Cleveland Street is approximately 36 acres. The incinerators generated ash waste containing, inter alia, metals such as lead, dioxin and arsenic. The ash is a hazardous substance under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). From the 1940's until the mid 1950's, the City of Jacksonville disposed of incinerator ash from its municipal incinerators at the Brown's Dump Site, and at the Jacksonville Ash Site ("Site"), which consist of approximately 250 acres.

9. The contaminants found at the Sites are hazardous substances, as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

10. The Brown's Dump Site is approximately 80 acres and consists of the former Mary McLeod Bethune Elementary School, an electrical substation of the Jacksonville Electric Authority and surrounding single family homes and multiple family complexes. The Jacksonville Ash Site consists of three separate locations of former waste processing and/or

disposal facilities operated or used by the City of Jacksonville. All three locations are located in the northwest portion of the City of Jacksonville. Collectively, the three areas within the Jacksonville Ash Site are over 170 acres in size. One of the sites is the Forest Street incinerator site which is presently enclosed by a chain link fence and includes the Forest Park Head Start School, a city park facility and surrounding residential properties. Another of the sites within the Jacksonville Ash Site includes the Emmett C. Reed Community Center, pool, playground, picnic areas and City baseball diamond and basketball courts, as well as residential areas. The third site within the Jacksonville Ash Site includes Lonnie C. Miller, Sr. Park and is approximately five miles northwest of downtown Jacksonville.

11. There have been and continue to be releases at the Sites of hazardous substances, as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

12. The United States has incurred "response" costs related to the Sites as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25). The United States is continuing to incur further costs, including enforcement expenditures, in connection with the Site.

13. The costs incurred by the United States related to the Sites constitute "removal" or "remedial" costs as defined by Section 101(23) and (24) of CERCLA, 42 U.S.C. § 9601(23) and (24), and "response" costs as defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

14. The Sites are, and were at all times relevant to this Complaint, a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

15. At all times relevant to this Complaint, "hazardous substances," as defined by Section 104(14) of CERCLA, 42 U.S.C. § 9601(14), were treated, disposed of, released, or presented the threat of release at the Site.

16. The United States has satisfied any condition precedent to the undertaking of response actions, to the incurrence of response costs and to recovery of those costs under Section 107 of CERCLA, 42 U.S.C. § 9607.

17. Defendant is jointly and severally liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all costs incurred and to be incurred, plus all other administrative, investigative, and legal expenses incurred or to be incurred as response costs at the Site, including prejudgment interest.

#### FIRST CLAIM FOR RELIEF

18. The allegations contained in paragraphs 1 through 17 above are incorporated in this claim for relief as if fully set forth herein.

19. EPA has determined that there was a release or substantial threat of a release of hazardous substances to the environment from the Site, and that remedial action is necessary to address these releases.

20. EPA issued Records of Decision ("RODs") on August 24, 2006 which calls for the implementation of a cleanup of the Sites to ensure protection of the public health, welfare and the environment.

21. The President, through EPA, has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment at the Sites because of the release and threatened release of hazardous substances.

22. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), authorizes the United States to bring an action to secure such relief as may be necessary to abate the danger or threat at the Sites.

23. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), Defendant is jointly and severally liable for the implementation of the remedial action set forth in the Records of Decision.

#### SECOND CLAIM FOR RELIEF

24. The allegations contained in paragraphs 1 through 17 above are incorporated in this claim for relief as if fully set forth herein.

25. The United States has incurred and is continuing to incur response costs related to the Site, including costs incurred in seeking to recover money spent at the Sites.

26. The costs incurred by the United States are for actions taken in response to the release or threat of release of hazardous substances from the Sites.

27. The actions of the United States at the Site and the costs incurred as a result of those actions are not inconsistent with the National Contingency Plan, which was promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and is codified at 40 C.F.R. Part 300.

28. Section 107 of CERCLA, 42 U.S.C. § 9607, authorizes the United States to bring an action to recover the costs incurred by the United States related to the Sites.

29. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendant is liable to the United States for all costs incurred and to be incurred by the United States at the Sites.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States prays, that this Court enter judgment, jointly and severally against the Defendant, requiring it to:

1. Take all action necessary to implement the Records of Decision;
2. Reimburse the United States for all response costs incurred or to be incurred with respect to the Sites, including future oversight costs, plus interest, and all other administrative, investigative, and legal expenses; and
3. Provide such other relief as the Court may deem just and appropriate.

Respectfully submitted,

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